

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-183

In re Applications of

WESTERN INSPIRATIONAL BROADCASTERS, INC. (hereafter "Western")	File No. BPED-910923MF
BROAD SPECTRUM COMMUNICATIONS, INC. (hereafter "Spectrum")	File No. BPH-910925ME
PHOENIX BROADCASTING, INC. (hereafter "Phoenix")	File No. BPH-910926ME
NINETY-TWO SEVEN LTD. (hereafter "SEVEN")	File No. BPH-910926MF
THE PARK LANE GROUP, INC. (hereafter "Group").	File No. BPH-910925MC (DISMISSED HEREIN)

For Construction Permit
for a New FM Station on Channel 224A
in Chico, California

HEARING DESIGNATION ORDER

Adopted: August 5, 1992;

Released: August 19, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Hearing Fee.* Group has not paid the hearing fee which was required by April 27, 1992, the date set forth in *Public Notice*, Mimeo No. 13110, released February 21, 1992. See revised Section 73.3573(g)(2) of the Commission's Rules and *Report and Order* in Gen. Dkt. 90-264 ("Proposals to Reform the Commission's Comparative Hearing Process"), 6 FCC Rcd 157, 157-158 and 170 (1990), *Erratum*, 6 FCC Rcd 3472, *recon. granted in part*, 6 FCC Rcd 3403 (1991). Accordingly, the application of Group (File No. BPH-910925MC) will be dismissed.

3. *Environmental.* Our engineering study based upon OST Bulletin No. 65 (October, 1985), entitled "Evaluating Compliance with Specific Guidelines for Human Exposure to Radiofrequency Radiation" ("OST Bulletin"), reveals that Seven did not address, and Phoenix did not sufficiently address, the matter of how they would protect

workers on their respective towers from RF radiation exposure. See 47 C.F.R. § 1.1307(b). Additionally, an engineering study of Seven's application reveals that in the area immediately surrounding the tower, the combined operation of existing station KKXX(AM), KHAP(FM), K67DY and Seven's proposal may significantly exceed the ANSI limit specified in the OST Bulletin. Consequently, we are concerned that Phoenix and Seven may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). See also *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 28, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure to workers exceeding specific standards. Since Phoenix's and Seven's proposals may have a significant environmental impact as defined by 47 C.F.R. § 1.1307, they will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally OST Bulletin No. 65, *supra*, at 28. In regard to the specific question of Seven's compliance with ANSI guidelines for protecting the general public from excessive exposure to RF radiation, if its site is presently fenced in compliance with the guidelines, Seven is required to include a statement to this effect and to give the distance from the base of the tower to the fence. Accordingly, Phoenix and Seven will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that the proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the presiding judge shall thereafter not consider the environmental effects of the respective proposals. See 47 C.F.R. § 1.1308(d).

4. *Comparative Coverage.* Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. *Conclusion.* Except as may be indicated by any issues specified below, the applicants (save for Group) are qualified to construct and operate as proposed. Since the pro-

posals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. ACCORDINGLY, IT IS ORDERED. That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications (save for Group's) ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Phoenix or Seven in which it is concluded the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1.1319.
2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED. That the Group application (BPH-910925MC) IS HEREBY DISMISSED.

8. IT IS FURTHER ORDERED. That in accordance with paragraph 3 hereinabove, Phoenix and Seven shall submit the environmental assessments required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

9. IT IS FURTHER ORDERED. That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED. That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of

the application. *See generally* *Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990). *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

11. IT IS FURTHER ORDERED. That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau